THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO.33394 OF 1997

DATE:31.08.2005

Between:

Smt. P.Nagamani, W/o.P.Bharat Kumar,

Aged about 40 years, Occ:Ex-employee,

R/o.Hyderabad.

..... PETITIONER

AND

The Labour Court-I, rep. by its Presiding Officer,

Chandravihar Building, I Floor, M.J.Road,

Hyderabad. And two others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION NO.33394 OF 1997

ORDER:

The present Writ Petition is filed challenging the award of the Labour Court-I, Hyderabad passed in I.D.No.27 of 1995, dated 6.9.1997.

The facts, to the extent necessary for the purpose of this Writ Petition and as referred to in the award of the Labour Court, are that the petitioner had undergone training as Comptist in P.N.Ganeshan & Company. Pursuant to the requisition, of the respondent-Corporation, for the services of Comptists, the petitioner was sent from P.N.Ganeshan & Company to serve the Corporation. Petitioner contends that she

worked in the respondent-Corporation from 1.1.1983 to 31.1.1983 and from 10.12.1983 to 10.2.1984, that she was appointed as Comptist on 10.12.1983 in the respondent-Corporation, that she worked upto 30.3.1993 for a period of ten years continuously with the hope that she would be absorbed and that she was initially paid Rs.35/- per day, which was subsequently increased to Rs.50/- and Rs.65/- per day. It is contended that the services of the petitioner were orally and illegally terminated by the respondent-Corporation on 30.12.1993 without complying with the mandatory requirement of Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act'). It is the petitioner's case that one Sri P. Surya Rao and Smt. Prafulla Kumari, who worked with her in the same job, were considered by the respondent-Corporation and absorbed in the post of Typist, which benefit was denied to her. It is contended that the action of the respondent-Corporation in not absorbing the services of the petitioner is arbitrary and discriminatory.

In its counter affidavit, the respondent-Corporation took the preliminary objection regarding maintainability of the I.D. as the petitioner was not an employee of the respondent-Corporation. While admitting that P.N.Ganeshan & Company was rendering services to the respondent-Corporation, supplying Comptometers, it is stated that the petitioner herein was an employee of P.N.Ganeshan & Company, and not that of the respondent-Corporation. The allegation that the petitioner worked in the respondent-Corporation is denied. It is stated that the respondent-Corporation never recruited any person to the post of Comptist and that the petitioner never worked with the respondent-Corporation. The oral termination of the petitioner by the Corporation is also denied, as the petitioner was not an employee of the Corporation. The allegation of violation of the provisions of Section 25-F of the Act are also denied contending that the question of retrenchment does not arise. The respondent-Corporation contends that P.N.Ganeshan & Company had been assigned the work by the respondent-Corporation, from time to time, and as per the contract, P.N.Ganeshan & Company had deputed its personnel with the comptometer to do the job and after completion of the job, hire charges for the comptometer and other expenditure were claimed by the said firm. It is also stated that P.N.Ganeshan & Company used to work for 3 or 4 days in a month and they never rendered any service on a regular basis. It is stated that if at all the petitioner worked, she had done so for P.N.Ganeshan & Company. It is also stated that the cases of P. Surya Rao and Prafulla Kumari have nothing to do with the case of the petitioner and that they were recruited as per their qualifications.

The petitioner examined herself as W.W.1, whereas, one N. Pasupati was examined on behalf of the respondent-Corporation as M.W.1. The petitioner marked two documents, i.e. her representations, as exhibits. Whereas, on behalf of respondent-Corporation, 12 documents were marked, including letters addressed by the Corporation to P.N.Ganeshan & Company, receipts, pay orders, etc.

In Ex.W.1 representation, dated 24.3.1994, the petitioner is said to have stated that she underwent training with P.N.Ganeshan & Company and she was not given opportunity to serve the Corporation as Comptist. On the other hand, M.W.1 in his evidence stated that the petitioner was not under the control of the Corporation; that she went to the office of the Corporation for attending Comptist work entrusted to her by P.N.Ganeshan & Company, who were supplying comptometers and providing services of the petitioner for attending work of 3 to 6 days in a month; that the petitioner was attending to the work as Comptist and going away; that she was not employed by the Corporation; and that whenever the services of the Comptist is required, the Corporation was addressing letters to P.N.Ganeshan & Company, who were sending any of its employees. Petitioner's contention that she had continuously worked from 1983 to 1993 was denied. With regard to the other two employees i.e. Surya Rao and Prafulla Kumari, M.W.1 deposed that those two persons were recruited by the Corporation in an interview test held from among those candidates, who were duly sponsored by the employment exchange and that there is a record and procedure to be followed in this regard.

The Labour Court held that,in order to establish her claim, the petitioner should have shown that she had worked continuously for 240 days in a period of one year; that no material was produced to prove that she worked as such; that no evidence was adduced to show that the respondent-Corporation was the employer, requiring compliance with Section 25-F of the Act. The Labour Court held that the petitioner did not show that she had worked continuously with the respondent-Corporation, and that she had worked with the Corporation only on the instructions given by P.N.Ganeshan & Company. With regards appointment of the two other employees, the Labour Court held that adequate explanation was given by M.W.1 with regard to their cases. Further, neither of the two employees were examined nor any evidence was let in by the petitioner in this regard to show that her case was comparable to those of the other two employees and that the petitioner did not even produce the

orders passed with regard to those employees. The Labour Court further held that the petitioner was not a workman under Section 2-S read with Section 25-B and Section 25-F of the Act and therefore her plea, of being reinstated into service, could not be sustained. The Labour Court dismissed the petition holding that the petitioner has failed to establish that she is the employee-workman working with the respondent-Corporation warranting reinstatement of her services.

Sri A.K.Jayaprakash Rao, learned counsel for the petitioner-workman, would submit before this Court that since the respondents had stated before the Labour Court, that the records were available, failure of the Corporation to produce the relevant records would require the petitioner's evidence to be accepted. It is contended that the petitioner having stated in her evidence that she had worked continuously for ten years, which required compliance with Section 25-F of the Industrial Disputes Act, the burden had shifted to the respondents and it was for them to show, by adducing necessary evidence, that the petitioner had not so worked. Learned counsel would submit that, the respondents having failed to discharge this burden, the Labour Court, on an erroneous premise of fact and law, had dismissed the petition and instead of accepting the evidence of the petitioner, which stood unrebutted on account of the respondents failure to furnish the requisite records, rejected the evidence of the petitioner holding that she had failed to discharge the burden. Learned counsel would submit that since it is accepted by the respondent-Corporation that services of two other employees had been regularized, the Labour Court had erred in not granting similar relief to the petitioner.

I am afraid, I cannot agree with the contention of the learned counsel for the petitioner. The Apex Court in **Municipal Corporation, Faridabad v . Siri Niwas**; **M.P. Electricity Board v. Hariram**; and **Range Forest Officer v. S.T. Hadimani** has categorically held that the burden is on the employee, who contends that she had worked continuously for a period of 240 days, to adduce sufficient evidence in support of the said plea and her oral self-serving testimony would not suffice.

In the present case, except for her oral evidence, no documentary evidence has been filed by the petitioner to show either that her services were directly engaged by the respondent-Corporation or that she had served the Corporation for a period in excess of 240 days in a continuous period of 12 months. The Labour Court, on the basis of the evidence adduced, came to the conclusion that the petitioner was neither an employee of the respondent-Corporation, nor did she satisfy the

requirement of Section 2-S of the Act, nor had she worked for 240 days in a continuous period of 12 months and therefore, the provisions of Section 25-F of the Act were not attracted. With regard to the plea of discrimination, the Labour Court found justification in the evidence of M.W.1 that the case of the petitioner was not similarly situated to that of the other two employees inasmuch as those employees had been appointed pursuant to their names being sponsored by the employment exchange and their being called for interview for appointment in the respondent-Corporation. The Labour Court also held that the petitioner had failed to let in necessary evidence in support of her plea of discrimination and that neither were the other two persons examined as witnesses nor were their orders of appointment filed in the Court.

It is well settled that, while exercising Certiorari jurisdiction, this Court does not sit in appeal nor would it re-appreciate the evidence on record. It is only when relevant material has not been taken into consideration by the Labour Court, or the findings recorded are perverse or is based on no evidence, that interference of this Court is called for. The award of the Labour Court does not suffer from any such infirmities. The petitioner, having failed to prove that her services were engaged by the Corporation directly or that she had completed 240 days of service, is not entitled to contend that Section 25-F of the Industrial Disputes Act is violated or that she should be reinstated with continuity of service and back wages.

Insofar as the plea of discrimination is concerned, it is to be noticed that the application filed by the petitioner is under Section 2-A(2) of the Industrial Disputes Act, which enables a workman to approach the Labour Court directly, in case of termination of her services. The relief sought for of absorption or for appointment on the ground that similarly situated persons have been so appointed, cannot be examined in proceedings under Section 2-A(2) of the Act and a dispute in this regard can only be raised and adjudicated by the Labour Court on a reference under Section 10 of the Act. Be that as it may, since the Labour Court, on the basis of evidence on record, has come to the conclusion that the petitioner had not established her plea of discrimination, the contention in this regard is also liable to be rejected.

The Writ Petition accordingly fails and is therefore dismissed. There shall be no

order as to costs.

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RAMESH RANGANATHAN, J

Date:31.08.2005

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THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO : 9096 of 1996

DATE:31.08.2005